

23498

When recorded mail to:

Vol. mgd Page 24407

BANK OF AMERICA
FEDERAL SAVINGS BANK
P.O. Box 4211
Portland, Oregon 97208-4211
Attention: Consumer Lending
Loan No. 0520110230843

SPACE ABOVE THIS LINE FOR RECORDER'S USE

K-42739
CUSTOMLINE® EQUITY
LINE OF CREDIT MORTGAGE
ADJUSTABLE RATE DEED OF TRUST

This Deed of Trust is entered into this 7th day of December, 1990.
to each other the word "you" and "your" mean Billy Jack Elbert and Grace Elbert, who are married
whose mailing address is, 10571 Crystal Spring Road Klamath Falls, OR 97603 as the Grantor.
The words "we," "us" and "our" mean Bank of America Federal Savings Bank, a federally chartered savings bank whose mailing address
is Post Office Box 4211, Portland, Oregon 97208-4211 as the Beneficiary. The Trustee is Klamath County Title Company
whose mailing address is P.O. Box 151 Klamath Falls, OR 97601.

1. **THE CUSTOMLINE AGREEMENT.** We have agreed to make loan advances to you in accordance with your CustomLine Equity Account Agreement and Disclosure dated December 7th, 1990, which is called the "CustomLine Agreement" in this Deed of Trust. These loan advances will be of a revolving nature and may be made, repaid, and remade from time to time. A series of advances to be secured by this Deed of Trust is contemplated by you and us, even if the unpaid balance owed under the CustomLine Agreement has previously been reduced to zero. The total outstanding balance owing at any one time under the CustomLine Agreement (including interest and other fees as provided in the CustomLine Agreement) shall not exceed \$19,500.00. That sum is referred to as the "Credit Limit" in the CustomLine Agreement and this Deed of Trust. The term of the CustomLine Agreement commences on the date of this Deed of Trust and shall end, if not paid earlier, on December 6, 2015.
(maturity date)

2. **OBLIGATIONS SECURED.** This Deed of Trust secures:

(a) Repayment of your indebtedness to us under your CustomLine Agreement. All of the loan advances under your CustomLine Agreement will be secured by this Deed of Trust. All modifications, amendments, extensions and renewals of your CustomLine Agreement are also covered by this Deed of Trust.

(b) Performance of all your obligations and agreements in the CustomLine Agreement and this Deed of Trust.

(c) Payment of all sums advanced by us in accordance with this Deed of Trust to protect us and our security in this Deed of Trust. Notwithstanding anything in this Deed of Trust to the contrary, this Deed of Trust shall not secure any portion of your outstanding balance owing under the CustomLine Agreement that exceeds the Credit Limit.

3. **VARIABLE RATE OF INTEREST.** The rate of interest on your outstanding balance under the CustomLine Agreement will vary from time to time as described in the CustomLine Agreement. The rate on the CustomLine Agreement is subject to indexing, adjustment, renewal, and renegotiation.

4. **SECURITY.** To secure your obligations and agreements to us in the CustomLine Agreement and this Deed of Trust, you irrevocably grant and convey, to the Trustee, in trust, with the power of sale, your home located at 10571 Crystal Spring Rd. in Klamath Falls, Oregon, including the lot and all buildings that are now or in the future on it, all rights and privileges to the real property and all fixtures that are now or in the future attached to it including all easements, rights, appurtenances, rents, royalties, mineral, oil, gas rights and profits, and water rights. All of this security is called "your Home" in this Deed of Trust. Your Home is in Klamath County, Oregon and is legally described as:

See attached Exhibit "A"

You acknowledge your Home is subject to mortgage or deed of trust of record, that is called your "Prior Loan" in this Deed of Trust. You acknowledge that except for encumbrances of record, you Home is unencumbered and you have the right to grant and convey your Home and will defend the title to your Home against all claims and demands subject to encumbrances of Record.

5. **PAYMENT OF AMOUNTS BORROWED.** You will promptly pay when due all amounts borrowed under the CustomLine Agreement, all interest, and all other fees provided in the CustomLine Agreement.

6. **PRIOR LOANS.** You agree to perform all of your obligations under the Prior Loans and any other security instrument with a lien that has priority over this Deed of Trust, including your obligations to make payments when due. You will not modify, amend, extend or renew the Prior Loans or accept any additional advances on the Prior Loans without first obtaining our written consent.

7. **LIENS.** You will pay all taxes, assessments and liens attributable to your Home. Within five days after any request by us, you will provide us with receipts showing that all amounts you are required to pay under this paragraph have been paid when due.

8. **HAZARD INSURANCE.** You will keep your Home insured against loss by fire, hazards included within the term "extended coverage" and flood and other hazards that we may require from time to time. The policy shall provide insurance in an amount not less than the amount of the Prior Loans plus your Credit Limit. The insurance company providing the insurance shall be chosen by you subject to our approval. All insurance policies and renewals shall be in a form acceptable to us and shall include a standard deed of trust beneficiary clause in our favor. You will give us prompt notice of a loss and we may make proof of loss if not made promptly by you. All insurance proceeds are assigned to us and shall be paid to us to the extent of all sums secured by this Deed of Trust, subject to the terms of the Prior Loans. If your Home is abandoned by you, or if you fail to respond to us within 30 days from the date we mail notice to you that the insurance company has offered to settle a claim for insurance benefits, we are authorized to collect the insurance proceeds. Any insurance proceeds shall be applied to restore or repair your Home or to repayment of the sums secured by this Deed of Trust, as we may choose, unless otherwise required by applicable law.

9. **PRESERVATION AND MAINTENANCE OF YOUR HOME.** You will keep your Home in good repair and shall not commit waste, permit impairment or deterioration of your Home. If this Deed of Trust is on a unit in a condominium or a planned unit development, you will perform all of your obligations under the declaration, covenants, conditions and restrictions, articles of incorporation or bylaws, or any equivalent constituent document creating or governing the condominium or planned unit development. You will pay, when due, all assessments imposed by the owners' association or any other governing body of the condominium or the planned unit development, if any.

10. **PROTECTION OF OUR SECURITY.** If you fail to perform your obligations and agreements in this Deed of Trust, or if any action or proceeding is commenced which materially affects our interest in your Home, then, at our option, upon notice to you, we may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect our interest. Any amounts disbursed by us pursuant to this paragraph together with interest thereon at the rate provided in the CustomLine Agreement shall be secured by this Deed of Trust. Such amounts shall be payable by you upon notice from us requesting payment. Nothing contained in this paragraph shall require us to incur any expense or take any action under this paragraph. Any action taken by us under this paragraph shall not cure any breach by you of any obligation or agreement under this Deed of Trust.

11. **CONDEMNATION.** The proceeds of any condemnation or eminent domain award or settlement in connection with your Home are assigned to us and shall be paid to us to the extent of your indebtedness under the CustomLine Agreement, subject to the terms of the Prior Loans.

12. **CONSTRUCTION OF IMPROVEMENTS.** If any loan advance under the CustomLine Agreement is for the purpose of constructing improvements to your Home, this Deed of Trust shall be deemed to be a "Construction Mortgage" as that term is defined in the Oregon Revised Statutes. At our option, we may require you to execute and deliver to us, in a form acceptable to us, an assignment of any rights, claims or defenses that you may have against parties who supply labor, materials or services in connection with improvements made to your Home.

13. **DEFAULT.** The occurrence of any of the following will be deemed to be an event of default: (a) you engage in fraud or material misrepresentation in connection with the CustomLine Agreement or the account established pursuant to the CustomLine Agreement; (b) you do not meet your repayment obligations in the CustomLine Agreement; or (c) you act or fail to act in a way that adversely affects your Home or any of our rights in your Home, including, but not limited to, the sale or transfer of your Home without our prior written consent, unless prohibited by law. If you commit an event of default, at our option, we may require immediate payment in full of all sums secured by this Deed of Trust without demand and may invoke the power of sale and any other remedies permitted by applicable law. We shall be entitled to collect all costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees (including allocated cost of our salaried attorneys, to the extent permitted by law) including any attorneys' fees awarded at trial or any appellate court.

14. **REMEDIES.** If we invoke the power of sale, we shall give written notice to the Trustee of the occurrence of an event of default and of our election to cause your Home to be sold. The Trustee shall record a notice of sale in the county in which your Home is located and shall mail copies of such notice in the manner prescribed by applicable law to you and to the other persons prescribed by applicable law. After the lapse of such time as may be required by applicable law and after any required publication and posting of the notice of sale, the Trustee, without demand on you, shall sell your Home at public auction to the highest bidder for cash at the time and place designated in the notice of sale. The Trustee may postpone sale of your Home by public announcement at the time and place of any previously scheduled sale. We or our designee may purchase your Home at any sale and shall have the benefit of any law, to the extent applicable, permitting credit bids. The Trustee shall deliver a Trustee's deed to the purchaser conveying your Home so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. The proceeds of the sale shall be applied in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of evidence of title; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto, or to the clerk of the superior court of the county in which the sale took place. We can also commence an action to judicially foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property.

15. **YOUR RIGHT TO REINSTATE.** If you meet certain conditions, you will have the right to reinstate this Deed of Trust and have any proceedings begun by us to enforce this Deed of Trust discontinued at any time prior to the earlier to occur of (i) the fifth day before the date of sale by the Trustee, or (ii) the entry of a judgment enforcing this Deed of Trust. These conditions for reinstatement are that you: (a) pay us all sums which would then be due under the CustomLine Agreement and this Deed of Trust had no acceleration occurred; (b) cure any default of your other obligations or agreements in this Deed of Trust; and (c) pay all costs and expenses actually incurred by us in enforcing this Deed of Trust, including, but not limited to, reasonable Trustee's fees and attorneys' fees, to the extent permitted by applicable law. Upon reinstatement by you, this Deed of Trust and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this reinstatement right shall not apply in the case of acceleration resulting from the sale or transfer of your Home.

16. **RELEASE.** This Deed of Trust will not be released until: (a) the CustomLine Agreement is terminated; (b) all sums due under the CustomLine Agreement have been paid in full; and (c) all other obligations secured by this Deed of Trust have been fully performed. Upon satisfaction of these conditions, this Deed of Trust shall be released. To the extent permitted by applicable law, the Trustee may charge a reasonable reconveyance fee for the release or reconveyance of this Deed of Trust.

17. **SUBSTITUTE TRUSTEE.** We may, for any reason or cause, from time to time remove the Trustee and appoint a successor trustee to any Trustee appointed under this Deed of Trust. A Notice of Substitution of Trustee shall be executed and recorded in accordance with applicable law.

18. **TIME OF ESSENCE.** Time is of the essence of each provision of this Deed of Trust.

19. **WAIVER.** To the fullest extent permitted by law, you waive the right to plead any statute of limitations as a defense to any

demand or obligation secured by this Deed of Trust. Additionally, you hereby release and waive all rights and benefits of the homestead exemption laws of the State of Oregon.

20. MODIFICATION. Without affecting your liability for payment of the indebtedness secured by this Deed of Trust or the lien of this Deed of Trust, we, or the Trustee if so requested by you, may, from time to time, do the following: (a) extend the time and alter terms of payment of any amounts due to us; (b) accept additional security; (c) substitute or release all or part of any property securing the indebtedness; (d) reconvey any part of your Home; (e) consent to the making of any map or plat; (f) join in granting any easement or in any extension agreement granting any easement or any agreement subordinating the lien or encumbrance of this Deed of Trust.

21. NO WAIVER. Any forbearance by us in exercising any right or remedy under this Deed of Trust or otherwise provided by applicable law, shall not be a waiver of, or preclude the exercise of, any such right or remedy.

22. SUCCESSORS AND ASSIGNS: JOINT AND SEVERAL. This Deed of Trust shall be binding upon, and shall inure to the benefit of, the respective heirs, personal representatives, successors and assigns of you and us. All of your obligations and agreements in this Deed of Trust are joint and several.

23. NOTICE. Except for any notice required under applicable law to be given in another manner, any notice provided for in this Deed of Trust shall be given by delivering or mailing such notice by first class mail addressed to you or us, as the case may be, at the address stated above or at such other address as may be designated by notice as provided in this paragraph.

24. SEVERABILITY. In the event that any provision of this Deed of Trust or the CustomLine Agreement conflicts with applicable law, then such conflict shall not affect other provisions of this Deed of Trust or the CustomLine Agreement which can be given effect without the conflicting provision.

25. GOVERNING LAW. This Deed of Trust shall be governed by the laws of the State of Oregon and by federal law.

26. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER LENDER IN POSSESSION. As additional security, you hereby assign to us the rents of the property, provided that you shall prior to acceleration or abandonment of the property under this Deed of Trust have the right to collect and retain such rents as they become due and payable. Upon acceleration or abandonment of the property, Lender, in person by agent or by judicially appointed receiver shall be entitled to enter upon, take possession and manage the property and to collect the rents of the property including those past due. All rents collected by Lender or the receiver shall be applied first to the payment of the cost of management of the property and the collection of rents, including but not limited to, receiver's fees, premiums on receiver's bonds, reasonable attorney's fees and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

THIS INSTRUMENT WILL NOT ALLOW FOR THE USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY IMPROVED USES.

BY SIGNING BELOW, YOU AGREE TO BE BOUND BY THIS DEED OF TRUST

Billy Jack Elbert
-Borrower Billy Jack Elbert

Grace Elbert
-Borrower Grace Elbert

-Borrower

-Borrower

STATE OF OREGON

County ss: KLAMATH

On this 7th day of December, 1990, personally appeared the above named and acknowledged the foregoing instrument to be THEIR voluntary act and deed.

(Official Seal)

My Commission expires: 8-27-92

Before me:

Paul Brecken
Notary Public for Oregon

STATE OF OREGON

County ss:

On this _____ day of _____, 199____, personally appeared the above named and acknowledged the foregoing instrument to be _____ voluntary act and deed.

(Official Seal)

My Commission expires:

Before me:

Notary Public for Oregon

REQUEST FOR RECONVEYANCE

TO TRUSTEE:

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Date:

By: _____

Title: _____

EXHIBIT "A"

DESCRIPTION OF PROPERTY

OK The following described real property situated in Klamath County, Oregon:

All of Lot 3 of Section 20, and all that portion of Lot 10 of Section 29 lying North of the County Road, all in Township 39 South, Range 10 East of the Willamette Meridian.

A parcel of land situated in Government Lot 8 in Section 21, Township 39 South, Range 10 East of the Willamette Meridian, more particularly described as follows: Beginning at the Southeast corner of said Lot 8; thence West along the South line of said Lot 950 feet to the true point of beginning; thence North and parallel to the East line of said Lot 880 feet to a point on the South line of the first described tract in Deed Volume 34 at page 455; thence Southwest along said South line to the West line of said section; thence South along said West line to the South line of said section; thence East along said South line to the point of beginning.

EXCEPTING from all of the above, those portions described in Agreement between F. E. Wilcox and Ada A. Wilcox, his wife, to United States of America recorded November 15, 1910 in Deed Volume 30 page 381, Records of Klamath County, Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co. the 10th day
of Dec. A.D., 19 90 at 11:32 o'clock A.M., and duly recorded in Vol. M90,
of Mortgages on Page 24407.

Evelyn Biehn - County Clerk

By Quelene Mendenhall

FEE \$23.00